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Remarks

Claims 1 and 3-7 are currently pending. For the reasons and arguments set forth below, Applicant respectfully maintains that the claimed invention is allowable over the cited references. Applicant has carefully reviewed the Office Action's statements in an attempt to ascertain the intent of the Office Action, but in many cases the arguments are improper or illogical. For instance, it appears that the Office Action is 1) citing to a nonexistent belt-clip, 2) asserting that a lever element for bending another material exists without showing support for the assertion, 3) suggesting that a cellular phone has a bottle top with a hoop strength and thus functions as a bottle and 4) suggesting that one would electrically connect the battery to a portion of the device cover. Further details of such improper and illogical arguments are discussed below. Notwithstanding such improprieties, Applicant has made amendments to the claims in an effort to facilitate prosecution.

The Office Action dated February 26, 2007 listed the following: The specification layout stands objected to; claims 1 and 5-7 stand rejected under 35 U.S.C. § 103(a) over Nakamura *et al.* (U.S. 6,529,714) in view of Rossi (U.S. 5,640,689); claim 3 stands rejected under 35 U.S.C. § 103(a) over Nakamura in view of Rossi, and further in view of Fuchs *et al.* (U.S. 3,870,184); and claim 4 stands rejected under 35 U.S.C. § 103(a) over Nakamura in view of Rossi, and further in view of Savovic *et al.* (U.S. 5,260,146).

Regarding the Office Action's suggestion to add headings, Applicant respectfully declines because the indicated suggestions in 37 C.F.R. § 1.77(b) are not statutorily required for filing a non-provisional patent application under 35 USC § 111(a), but per 37 C.F.R. § 1.51(d) are only guidelines that are suggested for applicant's use. They are not mandatory, and in fact when Rule 77 was amended in 1996 (61 FR 42790, Aug. 19, 1996), Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, stated in the Official Gazette:

"Section 1.77 is permissive rather than mandatory. ... 1.77 merely expresses the Office's preference for the arrangement of the application elements. The Office may advise an applicant that the application does not comply with the format set forth in 1.77, and suggest this format for the applicant's consideration; however, the Office will not require any application to comply with the format set forth in 1.77."

In view of the above, Applicant prefers not to add section headings.

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Notwithstanding the impropriety of the rejections (discussed further hereafter), Applicant has amended the claims to facilitate prosecution and respectfully submits that none of the cited references teach a mobile phone having a lever element for bending a bottle cap. Accordingly, Applicant requests that each of the rejections be withdrawn.

Applicant respectfully traverses the Section 103(a) rejections of claims 1 and 5-7 because the references cited by the Examiner fail to correspond to all of the claim limitations. The Examiner's argument appears to improperly rely upon references that are not cited to provide an otherwise nonexistent "belt clip." The Examiner asserts that Rossi teaches a "belt clip," however, the cited portions of Rossi (*i.e.*, figures 1-4 and col. 3, lines 21-40) do not contain the term "belt clip" and a word search of Rossi reveals that neither word is even present in the reference. The cited portions of the Rossi reference teach a PDA unit 10 that has a housing 20 and a lid 18. It appears that the Office Action is improperly relying upon a reference that has a belt clip. Moreover, the cited portions of the references do not teach a lever element that is arranged to bend a material of lower hardness, external to the portable electronic apparatus (the mobile telephone (claim 6), the mobile telephone housing (claim 7)), by way of a leverage effect as in the claimed invention. The cited teachings of Rossi do not teach what the Office Action asserts because there is no mention of using any part of the PDA unit 10 as a lever to bend a material of lower hardness. Accordingly, the Section 103(a) rejections of claims 1 and 5-7 are improper and Applicant requests that they be withdrawn.

Applicant further traverses the Section 103(a) rejections of claims 1 and 5-7 because the Examiner fails to provide any evidence of motivation to modify the Nakamura reference with the alleged teachings of the Rossi reference. The Examiner merely states that it would be obvious to modify Nakamura without providing any reasoning as to why one skilled in the art would be motivated to do so. Moreover, the Examiner's statements regarding the proposed modification of the Nakamura reference are confusing and appear to be unrelated to the cited portions of the references. The Office Action states that it would have been obvious to modify Nakamura to incorporate the alleged teaching of Rossi "in order to use the lever element to secure the battery pack with a connected lever element such that a user does not need to remove the lever element from the housing in case of changing the battery pack." See, *e.g.*, the instant

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Office Action at page 5, lines 2-7. For example, the cited portions of the Rossi reference do not teach a lever element or any manner of changing a battery pack without the need to remove the lever element from the housing. It would appear that the Office Action is asserting a combination and function that is not present in the cited portions of the references. It is not possible to ascertain the propriety of such a hypothetical and unexplained combination because it is unclear exactly what the combination entails. In view of the above, the Section 103(a) rejections of claims 1 and 5-7 are improper and Applicant requests that they be withdrawn.

In addition to the reasons discussed above, Applicant further traverses the Section 103(a) rejection of claim 5 because the cited portions of the references fail to correspond to claimed limitations directed to the lever element being constructed as an angled metal plate. The Office Action cites to lid 3 of Nakamura as corresponding to the lever element of the claimed invention; however, the cited portions of the Nakamura reference do not teach that the lid 3 is a folded metal plate. Moreover, a word search of the Nakamura reference fails to identify any mention of the word "metal" in the reference. Accordingly, the Section 103(a) rejection of claim 5 is improper and Applicant requests that it be withdrawn.

Applicant traverses the Section 103(a) rejection of claim 3 because the Office Action's argument is illogical because it appears to require adding a bottle cap to a phone. This illogical combination is apparent from the Office Action's attempt at providing motivation for modifying Nakamura with the teachings of the Fuchs reference. The Fuchs reference relates to improving convenience type easy-open closures for bottles (*see, e.g.*, the abstract). The Office Action's alleged motivation for the modification is "to increase the hoop strength" (*see, e.g.*, the instant Office Action at page 6, lines 4-5); however, the Nakamura reference does not have any corresponding hoop strength to increase because Nakamura has no corresponding easy-open closure for a bottle. Applicant submits that it is illogical for the Office Action to suggest modifying the Nakamura reference to increase the hoop strength, in that Nakamura has no corresponding structure in which to increase the hoop strength. Put another way, it appears that the Office Action is attempting to increase the hoop strength of a bottle top somehow located on a phone. To the extent that the Office Action is asserting that a

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phone would function as a bottle, Applicant submits that there is no support for such an illogical function.

Moreover, one of skill in the art would not be motivated to modify Nakamura with the cited teachings of Fuchs because of the lack of correspondence between the references and further because the references are from completely unrelated fields of endeavor (*i.e.*, radio communication equipment and bottle caps respectively).

Moreover, the combination of references cited by the Office Action fails to correspond to the claimed invention for the reasons discussed above in relation to the Section 103(a) rejection of claim 1. In this regard, the rejection of claim 3 is improper because it relies upon the same misinterpretation of the Nakamura and Rossi references. Accordingly, the Section 103(a) rejection of claim 3 is improper and Applicant requests that it be withdrawn.

Applicant further submits that the Fuchs reference is not analogous art to the claimed invention, and thus, according to MPEP § 2141.01(a), the Office Action has improperly relied upon Fuchs as a basis for the Section 103(a) rejection of claim 3. In view of the above, the Section 103(a) rejection of claim 3 is improper and Applicant requests that it be withdrawn.

Applicant traverses the Section 103(a) rejection of claim 4 because the combination of references cited by the Office Action fails to correspond to the claimed invention for the reasons discussed above in relation to the Section 103(a) rejection of claim 1. In this regard, the rejection of claim 4 is improper because it relies upon the same misinterpretation of the Nakamura and Rossi references. Moreover, the cited portions of the Savovic reference fail to correspond to claimed limitations directed to the lever element being made of metal and/or ceramic. The cited portions of the Savovic reference teach a cathodically protected battery 100 that is formed from a battery cell 110 (*see, e.g.*, Col. 2, line 62 to Col. 3, line 14 and figure 1). The "metal lid" of Savovic that the Office Action cites to as corresponding to the lever element of the claimed invention, is the lid for the cell housing of the battery cell (*i.e.*, the lid is part of the battery 100). The cited portions of the Savovic reference do not teach that the lid cited by the Office Action in any way functions as a lever element being arranged to bend any material.

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Accordingly, the Section 103(a) rejection of claim 4 is improper and Applicant requests that it be withdrawn.

Application further traverses the Section 103(a) rejection of claim 4 because the Office Action fails to provide motivation for modifying Nakamura with the teachings of the Savovic reference. The Office Action cites to the lid 3 of Nakamura, which forms part of the housing of a telephone 1, as corresponding to the lever element of the claimed invention, and the Nakamura reference teaches that the lid covers battery pack 10 (*see, e.g., figure 1 and col. 2, lines 54-65*). Applicant submits that one of skill in the art would not be motivated to modify the lid 3 of Nakamura with teachings from the Savovic reference that are directed to a battery cell (*see, e.g., Col. 2, line 62 to Col. 3, line 14 and figure 1*). The Office Action's alleged motivation is "to connect the anode to the positive terminal" (*see, e.g., the instant Office Action at page 6, lines 12-13*). The Office Action appears to be proposing that one of skill in the art would be motivated to modify the lid 3 to be made of metal in order to connect the anode of the battery pack 10 to the positive terminal of the battery pack 10. Applicant submits that this proposed modification of Nakamura is unsupported and illogical. One of skill in the art would not be motivated to modify the lid 3 as taught by Nakamura to be made of metal in order to connect to the battery pack 10, because electrically connecting the battery pack to the lid (which comprises part of the outer housing of the telephone 1) would cause the lid to be electrically charged relative to the battery pack thereby resulting in numerous problems with the functionality of the Nakamura reference as would be readily apparent to one of skill in the art. Therefore, the Section 103(a) rejection of claim 4 is improper and Applicant requests that it be withdrawn.

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In view of the remarks above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the attorney overseeing the application file, Mike Schmitt, of NXP Corporation at (408) 474-5015.

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